

97-84254-28

Trumbull, Matthew Mark

Legal tender

Chicago

1895

97-84254-28

MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES  
PRESERVATION DIVISION

## BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

332

Z

v 38

Trumbull, Matthew Mark, 1826-1894.

Legal tender, a posthumous article. Chicago,  
1895.

p.4511-4514. 30cm.

From the Open court, v.9,no,405.

Vol. of pamp.



ONLY ED

RESTRICTIONS ON USE: Reproductions may not be made without permission from Columbia University Libraries.

## TECHNICAL MICROFORM DATA

FILM SIZE: 35 mmREDUCTION RATIO: 9:1IMAGE PLACEMENT: IA IIA IB IIBDATE FILMED: 11-20-97INITIALS: PBTRACKING #: 29853

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

No. 9  
332  
Z  
38  
#9

# THE OPEN COURT.

A WEEKLY JOURNAL

DEVOTED TO THE RELIGION OF SCIENCE.

No. 405. (VOL. IX.—22.)

CHICAGO, MAY 30, 1895.

{ One Dollar per Year.  
{ Single Copies, 5 Cents.

COPYRIGHT BY THE OPEN COURT PUBLISHING CO.—Reprints are permitted only on condition of giving full credit to Author and Publisher.

## LEGAL TENDER.

A POSTHUMOUS ARTICLE.

BY M. M. TRUMBULL.

BECAUSE everybody believes it, it is not therefore true, and because nobody believes it, it is not therefore false. That a dogma or a doctrine is accepted by the majority is a strong argument in its favor, but it is not conclusive. I believe that any maxim, rule, doctrine, or expedient in sociology, politics, law, or in anything else that is out of moral symmetry is out of symmetry altogether; and any principle not built upon an ethical foundation is rickety and dangerous, liable to fall under any unusual pressure brought against it. The present monetary crisis that baffles the skill of our statesmen ought to be convincing proof of this. Further, I believe that any dishonest law approved by any people weakens their sense of magnanimity and their consciousness of moral obligation. A government makes itself a teacher of dishonesty, so long as it keeps among its laws the statutes of legal tender.

In studying the evolution of money as a medium of exchange, we shall find that the law of natural selection has been continually interfered with by governments, because they could more effectually pillage a country by an oppressive use of the "money power" than by any other peaceful instrumentality whatever, and I believe that the "money power" in the hands of government has been more potent in the subjugation of the common people than superstition or the sword. I think I am opposed to the money power exercised by the national banks, and to the money power possessed by certain corporate and incorporate monopolies, by numberless trusts, conspiracies, and combines, and to all the other subordinate "money powers," more or less qualified for evil, but all these are to a great extent controlled by the laws, needs, customs, and obligations of business, while the "money power" known as government is unlimited in authority and wholly irresponsible. One of the great masters of statescraft was the man who invented the scheme of legal tender, as the English kings acknowledged with becoming gratitude when they used it for the spoliation and oppression of the people. They encroached upon the innocent coining privilege, and

claimed the right to regulate all money. They corrupted the money while coining it and after coining it, and they debased the currency at will. Then they made it "legal tender" by punishing those who had the presumption to slander the "King's coin" by refusing to take it at its nominal value in payment of debts. And to this day in England the "King's coin" and the "coin of the realm" are metallic and sonorous legal phrases that assume the political character of money, and place its quality and quantity under the control of the "Crown."

The impudent expression "legal tender," when it appears in any law concerning money, puts that law under suspicion, because honest money needs no legislative whip to make it go. The promise of one man to pay another a hundred dollars is not payment, but there are persons who think that "Government" has the magic power to pay ten thousand million dollars with its own promises to pay. They even expand the miracle, so that a citizen debtor can pay his debts by the simple tender of a government promissory note, whether the creditor is willing to take it or not; and there are thousands of men in Chicago still at large who believe in this impossible alchemy.

There have been in our own country, and in other countries, too, many "circulating mediums" of bad character travelling about as money, and they have done a very profitable and extensive business on false pretenses. Certain substitutes for money, having served for a time in that capacity, declare themselves real money under a licence from the law, and they often do much mischief before they can be arrested and suppressed. For this, government is responsible. It asserts the omnipotent power to create something out of nothing, and with false money it has tempted one part of the community to cheat the other, the most helpless victims of the "green goods" monetary system being the men and women and children who work for wages. It was an arrogant assumption of illegitimate power when governments declared money to be a legal tender in the payment of debts. By doing so they made a political standard of honesty, elastic, uncertain, and shifting from time to time. This despotic legislation has thrown the whole system of human dealing into a chaos of moral confusion. Governments

declare gold, silver, paper, tobacco, coonskins, rum, and various other things to be legal tender in payment of debts, and the result is the debasement of the national conscience and the national currency together.

I do not mean to say that it is not within the legal power of a government to close its courts to creditors and declare that certain coonskins, or other legal tenders, having been offered them, their debtors are free and their debts paid; but in the dominion of morals the act is unconstitutional and void. There justice reigns, and a debt is not paid until the moral obligation it contains is cancelled. Great as this government is, it is not able to pay any man's debt by statute. It may declare the debt expunged, cancelled, satisfied, wiped out, even paid, but only the debtor can pay it. The moral confusion in these cases is created by the wrong word, "payment." A debtor, finding that his debts are paid by legal force, is apt to think that the moral as well as the legal obligation to pay has been discharged by the laws of his country, when, in fact, the moral obligation can be discharged by himself alone. "I owe you nothing," said a dishonest debtor to his creditor, "that note was outlawed last week." In like manner the bankrupt, having passed through the court, thinks that he owes nothing, and that all his debts are paid.

It was a fantastic dream of the alchemists that by chemical expedients they could change the baser metals into gold, but it is a more irrational fanaticism that believes in the power of governments to create money that will pay debts. All the resources and skill of the alchemists failed, and there is no political alchemy that can perform this later miracle. Jackson owes Johnson a hundred dollars, and when Thompson steps in and declares what shall be a legal tender in payment of the debt, we agree at once that the interference is an impudent usurpation, and that in law and in morals it is absolutely void. Now, multiply Thompson by a hundred, or a thousand, or ten million, and you have added no moral quality to his interference; but when the ten million Thompsons organise themselves into the corporation called government, they condense themselves into a physical power strong enough to enforce their will and make it the law of the land; but it is the usurpation of Thompson still. What is wrong for one man to do is wrong for ten million men to do.

For centuries mankind has been afflicted with social wrongs because of the political mistake of governments that they possess the prerogative of creating money. Markets, not governments, determine what is money. No matter what nominal value government may give to coins or paper bills, their actual value in exchange is fixed in the markets of the world. The commercial value given to a piece of paper by making

it a legal tender in the payment of debts is a limited and abnormal value, a dishonest coercion of creditors, and the weakness of it appears in the fact that although the government may compel a merchant to accept it in payment for a debt, or get nothing, it cannot compel him to receive it in payment for his goods. Here the fiat becomes impotent, and the legal tender usurpation fails. No fiat of the government can give a dollar's value to a piece of paper, nor will it pass current until commercial vitality is given to it by the express or implied promise of the government to redeem it in metallic money having the same value according to its weight before coining as after, and independent of the image and superscription stamped upon it.

A very good quality of statecraft was utilised when government stamped upon its coins the effigy of the king, because by that bit of political necromancy it stamped upon the popular brain, which is usually rather soft, the fiction of the "King's coin," and it led the people to connect by an easy mental process the king and the coin together. By this device public attention was diverted from the actual value of the coins, and the people were hypnotised into the delusion that it was the king's portrait stamped upon the money that gave it purchasing power, as our Government reconciles the people more easily to paper money by printing pictures on the back of it representing De Soto discovering the Mississippi, or the landing of Columbus. But coinage adds nothing to the value of the metal coined. Gold bullion is equal in value to gold eagles or gold sovereigns weight for weight. I think the four hundred shekels of silver paid by Abraham for the field of Machpelah were not coins, at least, not legal tender coins, for they were weighed, not counted, and yet they were "current money with the merchant." When the sons of Abraham passed under the dominion of Rome, and those shekels bore the image and superscription of Cæsar their value relatively to the other silver round about them was not changed. The coining of them simply dispensed with the trouble of weighing them. The "image and superscription" merely said to the merchants, "You need not weigh these pieces; Cæsar hath already weighed them, and vouches that they contain so many grains of silver." And wherever those shekels are to-day, whether in shillings or in dollars, whether bearing the image and superscription of Queen Victoria, or our own goddess of liberty, the image and superscription upon them testify only to their weight. Whatever additional value they obtain by reason of their legal tender quality is a dishonest value, the measure of their usefulness in cheating creditors and poor men out of their wages.

Kindred in statesmanship to "Legal tender," and the king's effigy on money was the assumed right of

governments to nickname coins in order to give them an arbitrary and artificial character expressive of no quality in the coins. Why not make an honest ounce of silver a monetary unit and truthfully name it an "Ounce"? If the name of every coin expressed the actual weight of it, the multiple or fraction of an ounce, the people would not be so easily deceived by the fiscal tricks of governments. Florins, francs, dollars, and shillings, are deceitful nicknames, intended to conceal the quality of the money they pretend to describe. They may be of different weights at different times, changing their values and keeping their names, but no government could coin three hundred grains of silver, and call it an ounce without being at once detected, nor could such a coin be made adequate to cheat the workingman out of his labor.

"BOSTON, Dec. 14, 1893.

"DEAR GENERAL TRUMBULL:

"Your note of the twelfth is at hand.

"I long since came to the conclusion that legal tender acts must have been born of fraud. So long as money of any kind was true to the weight indicated by nearly all the names of coin or other pieces of money, the conception of an act of legal tender could not in the nature of things have occurred to any one. Evidence of an effort to fulfil contracts with money of full weight being a very different matter from prescribing by a legal tender act what kind of money should be offered. I therefore began a system of inquiry among the learned in the law, from judges of the Supreme Court down to young practitioners. Not until very lately could I get a trace of the origin of legal tender. This trace was given me by Prof. James B. Thayer, of Harvard University, who pointed out the edicts of Edward III. as probably being the first legal tender acts among English speaking people. He debased coin and of course he issued an edict making it a penal offence for any one to refuse the King's money. From that time to the present day acts of legal tender have worked corruption.

"If all acts of legal tender were repealed, the conceptions of weight and value would be re-united. Free coinage or the manufacture of round disks of even weight and fineness would be perfectly safe. A given weight of gold would be maintained as the standard of the world's commerce as it is now.

"It happens that in the *Forum* for January which will presently be published you will find this subject treated. I had made an arrangement with a young lawyer with whom I had co-operated in writing an article on 'Personal Liberty' some time since, to work up this whole question of legal tender from its inception. But alas! the young man was struck by death, and I know of no one with whom I could renew the undertaking.

Yours very truly,

EDWARD ATKINSON.

I did not need this letter to convince me that Mr. Atkinson had adopted my views on the subject of legal tender, for in his latest book, *Taxation and Work*, he had already surrendered the doctrine of "legal tender" in a rather qualified way. He says: "There is no need of a legal tender among men who intend to meet their contracts honestly." The qualification does not qualify, because if honest men do not need any legal tender, dishonest men ought not to have its aid,

and Mr. Atkinson might as well have said, "There is no need of legal tender at all."

Commenting on Mr. Atkinson's opinions *The Westminster Review* remarks as follows: "That expression 'legal tender,' by the way, is not a well defined one in Dr. Atkinson's mind. He imports into the well-established phrase the idea that a nation is always on the watch to palm off a coin for more than it is really worth—whereas the value of legal tender is to meet the convenience of the community by earmarking the best medium of exchange; and the history of currency shows us over and over again that if the government sets its seal upon an inadequate medium the nation will set it aside."

The above explanation shows that the phrase "legal tender" is much better defined in Mr. Atkinson's mind than it is in the mind of his critic. *The Westminster Review* thinks that the phrase "legal tender" does not include any debt-paying qualities, but is merely an indirect method of "earmarking the best medium of exchange." This may be all there is of it in England, since the government there has adopted the money standard of the markets, but in the United States it means the privilege of paying debts with depreciated coin or currency. For these latter uses "legal tender" is obsolete in England, although the ancient form of it yet lingers in the monetary system of that country. It is like the vermiform appendage, if I get the name of it right, which lingers in the human body, although its uses have long ago ceased; and the vermiform appendage, as I have been told by scientific men, whenever it chooses to become angry, can make itself troublesome, and, perhaps, dangerous. Even the limited and comparatively harmless character of legal tender, as defined by the *Westminster Review*, condemns it, because the *Review* confesses that government sometimes earmarks an "inadequate medium," instead of the "best medium," and this is a very good reason why government should altogether cease the practice of earmarking money. By the "nation," the *Review* means, of course, not the government, but the people in their markets. And here every "inadequate medium" will be set aside, because the government has no power to make anything a legal tender in the purchase of goods. Where, however, the inadequate medium has the government authority to discharge debts, it may work incalculable mischief before the nation can set it aside. There is a little vainglory in the boast of the *Westminster Review*, for England persisted in earmarking an inadequate medium for seven hundred years.

There is much innocent simplicity in the banter of the *Review* where it laughs at Mr. Atkinson for his unreasonable supposition that a nation is always on the watch to palm off a coin for more than it is really

worth; but if the reviewer had thought historically for a moment he would have remembered that nations have been doing that very thing ever since they came into possession of the "money power." Even England has but recently abandoned the practice, and may begin it again at any time.

In tracing the origin of "legal tender," Professor Thayer did not go far enough, because I find that more than two hundred years before the reign of Edward the Third, King Henry the First debased the currency one per cent., and in that way cancelled a debt of a hundred shillings by the payment of ninety-nine. This was a tax of one per cent. upon industry and business, the injustice of which fell heavily on the workmen, because they constitute the most numerous portion of the creditor classes, for they are compelled to sell their labor on time; and Prof. Thorold Rogers in his great book, *Six Centuries of Work and Wages*, has convincingly shown that the trick of depreciating the currency and earmarking an "inadequate medium" was potent in the oppression of the workmen of England from the time of the Black Death down to 1834, when the industrial system of England had the advantage of a more sound and stable currency. It will always be a satire on the partiality of human laws that when a citizen mutilated the coin, or debased the currency, and then made it a "legal tender," he was hanged for it; but the king never was.

Much confusion, not only of mental ideas, but of moral ideas, also, has arisen from an innocent use of words and phrases, such, for instance, as "payment," "legal tender," "full legal tender," and the like. Some people mean by "full legal tender" the power to buy goods as well as to pay debts. This was the meaning given to the phrase by the French Republic, and the penalty for giving it a more limited meaning was death. Yet the legal tender of the French Republic could not buy goods, although it had behind it the French nation, the forfeited lands of the nobility and clergy, and the guillotine. Even England, at a later day, decreed by law that no person should give more for a guinea than twenty-one shillings in paper money, and all persons were forbidden to give less for a one pound note than twenty shillings in silver. This was statesmanship in England as late as the nineteenth century. But it was void statesmanship. Men gave the market value for the paper money, and no more. There was not power enough in the British monarchy to compel them to give more, and the reason of it is that omnipotence is denied to man. Neither Parliament nor Congress can create value. They may take value from one thing and add it to another, as in legal tender legislation, but they cannot create value to the amount of fifty cents.

There is no honest reason for "earmarking" gold in order to convince a people that it is a more "adequate medium" than silver. They can learn that for themselves, and the government might as well earmark wheat in order to persuade us that it is worth more bushel for bushel than oats or turnips. For any honest purpose the earmarking is redundant and superfluous. Shortly after I came to America I "hired out," as they call it, on a farm, and one of my first duties was to help my employer feed the hogs. He surprised me a little by the reckless manner in which he threw forty or fifty ears of corn into the pen. Now, I knew nothing about farm life, for I had always lived in London, and had hardly ever seen a four-footed hog in all my life. I knew nothing of its ability and resources, and so I was foolish enough to say to my boss: "Don't you shell that corn for them?" "No," he said, "they shell it." Now, the people of this country are as able to earmark their own money, without the aid of the government, as those hogs were to shell their own corn. Let the Government stop debasing the currency by "legal tender" legislation and there can be no objection to coining all the sand of California into gold dollars, and all the Rocky Mountains into silver dollars, if there is room for them to circulate through the arteries of trade, and when there is no longer any room for them to circulate, the coinage of them will automatically cease. Abandon the whole system of legal tender, and the money problem will soon be solved.

#### EPIGENESIS OR PREFORMATION.<sup>1</sup>

BY PROF. ERNST HAECKEL.

THE phenomena of ontogenesis, or individual development, possess for our knowledge of phylogensis the highest import; and this holds true of the plant kingdom as well as of the animal kingdom; it holds true of embryology proper as much as it does of metamorphology or the history of transformations which follows it. The former carries us back, in the simple ancestral cell or fertilised ovum, to the primitive unicellular state from which originally all metaphyta and all metazoa phylogenetically sprang. The latter displays before our eyes in the "metamorphosis of the cormus," and especially of its blossom offspring, the most important stages of the ancestral series, passed through by the thallophytic and cormophytic ancestors of the *Anthophyta*. Although in all *Anthophyta* (and in fact more so in the *Angiospermae* than in the *Gymnospermae*) the whole progress of ontogenesis has, by abbreviated heredity, by the transformation of the prothallium into the endosperm, and by other cenogen-

<sup>1</sup> From the new *Phylogenie*. By *μυρκ*. The series of which this article is the conclusion ran through Nos. 387, 391, 394, 396, and 398 of *The Open Court*, where readers are referred for the explanation of difficult technical terms.

**END OF  
TITLE**